



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

October 28, 2004

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2004-9204

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 212039.

The Texas Department of Criminal Justice (the "department") received a request for "the status and purpose" of an investigation of a department warden. You claim that the requested information is excepted from disclosure under section 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The submitted information includes search warrant affidavits. Article 18.01(b) of the Code of Criminal Procedure provides, in relevant part:

A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. The affidavit is public information if executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Crim. Proc. Code art. 18.01(b). It is unclear from the submitted information whether the related search warrants have been executed. If the search warrants have been executed, the search warrant affidavits must be released in accordance with article 18.01(b) of the Code

of Criminal Procedure. If the search warrants have not been executed, you must dispose of these affidavits in accordance with the remainder of this ruling.

Section 552.108 of the Government Code, the "law enforcement exception," excepts from required public disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 applies to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You indicate that the submitted information relates to two on-going criminal investigations conducted by the department's Office of the Inspector General regarding allegations of official oppression and misuse of departmental property. Therefore, we find that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a). Thus, we conclude that section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Basic information under section 552.108(c) includes the identity of the complainant and a detailed description of the offense. *See id.* at 3-4. We note, however, that case number 04-1784 relates to allegations of sexual harassment. The identity of an alleged victim of sexual harassment is excepted from public disclosure under section 552.101 in conjunction with common-law privacy.<sup>1</sup> *See* Gov't Code § 552.101; *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*) (identities of witnesses to and victims of sexual harassment were highly intimate or embarrassing information that was not matter of legitimate public interest); Open Records Decision Nos. 393 (1983), 339 (1982). Thus, the department must withhold the identity of the complainant in case number 04-1784 under section 552.101 in conjunction with common-law privacy. Otherwise, the department must release basic information, even if that information does not literally appear on the front page of an offense or arrest report. The department may withhold the remaining submitted information under section 552.108(a)(1).

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<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the common-law right to privacy. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In summary, if the search warrants have been executed, the search warrant affidavits must be released in accordance with article 18.01(b) of the Code of Criminal Procedure. In regard to the remaining information at issue, including the search warrant affidavits if the search warrants have not been executed, we conclude that (1) the department must withhold the identity of the complainant in case number 04-1784 under section 552.101 in conjunction with common-law privacy, (2) the remaining basic information must be released, and (3) the department may withhold the remaining submitted information under section 552.108(a)(1).<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

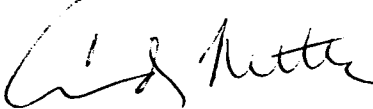
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<sup>2</sup>As our ruling is dispositive, we do not address your section 552.117 claim.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 212039  
Enc. Submitted documents

c: Mr. Terry Pelz  
3123 Peach Tree Lane  
Missouri City, Texas 77459-4129  
(w/o enclosures)